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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

ELLEN ROSENBLUM, the Attorney General  
for the State of Oregon; STATE OF  
OREGON, by and through Ellen Rosenblum,  
the Attorney General for the State of Oregon,  
the Oregon Health Authority, and the Oregon  
Department of Human Services; and the  
OREGON HEALTH INSURANCE  
EXCHANGE CORPORATION, dba Cover  
Oregon, an Oregon public corporation,

Plaintiffs,

vs.

ORACLE AMERICA, INC., a Delaware  
corporation; STEPHEN BARTOLO, an  
individual; THOMAS BUDNAR, an  
individual; KEVIN CURRY, an individual;  
SAFRA CATZ, an individual; BRIAN KIM,  
an individual; RAVI PURI, an individual; and  
MYTHICS, INC., a Virginia corporation,

Defendants.

No. 3:14-cv-1532

**NOTICE OF REMOVAL TO FEDERAL  
COURT PURSUANT TO 28 U.S.C. §§ 1441,  
1446, AND 1454 BY DEFENDANTS  
ORACLE AMERICA, INC. AND SAFRA  
CATZ**

**TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON AND TO PLAINTIFFS ELLEN ROSENBLUM, THE STATE OF OREGON, THE OREGON DEPARTMENT OF HUMAN SERVICES, THE OREGON HEALTH AUTHORITY, AND THE OREGON HEALTH INSURANCE EXCHANGE DBA COVER OREGON, AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that Defendant Oracle America, Inc. (“Oracle”) and Defendant Safra Catz (“Catz”) hereby remove the above-captioned action from the Circuit Court of the State of Oregon for the County of Marion (Case No. 14-C-20043) to the United States District Court for the District of Oregon, pursuant to 28 U.S.C. §§ 1441, 1446, and 1454.

**STATEMENT OF THE CASE**

1. On August 22, 2014, Plaintiffs Ellen Rosenblum (the Attorney General for the State of Oregon); the State of Oregon through Ms. Rosenblum (“the State”); Oregon’s Department of Human Services (“DHS”); the Oregon Health Authority (“OHA”); and the Oregon Health Insurance Exchange Corporation d/b/a Cover Oregon (“Cover Oregon”) (collectively “Plaintiffs”) filed a complaint entitled *Ellen Rosenblum, the Attorney General for the State of Oregon; et al. v. Oracle America, Inc., et al.*, Case No. 14-C-20043 (the “State Complaint”) against Oracle; Mythics, Inc. (“Mythics”); and six current and former Oracle employees—Stephen Bartolo, Thomas Budnar, Kevin Curry, Safra Catz, Brian Kim, and Ravi Puri (collectively “Defendants”). Attached hereto as Exhibit A is a true and correct copy of the Complaint and Summons served on Oracle and Catz in this action up to the present date. The allegations of the Complaint are incorporated by reference in this Notice of Removal without any admission that any of the allegations are true.

2. The Complaint asserts fourteen claims for relief arising from Oracle’s provision of services in developing software and hardware to be used in deploying a health insurance exchange (“HIX”) under the Patient Protection and Affordable Care Act, and the so-called “Modernization” project by which DHS and OHA intended to create a technological solution to

delivering a number of its longstanding social service programs. Among other things, Plaintiffs allege breaches of a November 30, 2011 Oracle License and Services Agreement (“OLSA”) Oracle entered into with DHS and OHA (the “DHS/OHA OLSA”) and a March 14, 2013 OLSA Oracle entered into with Cover Oregon (the “Cover Oregon OLSA”), as well as fraud in the inducement of those contracts.

3. The Complaint alleges eight claims against Oracle, including claims for fraud, violations of Oregon’s False Claims Act (“OFCA”), violations of Oregon’s Racketeer Influenced and Corrupt Organizations Act (“ORICO”), and breach of contract. The Complaint also alleges a total of six claims against the individual defendants for violations of the OFCA.

4. Service of the Complaint was perfected on Oracle on August 22, 2014. *See Exhibit A.* Defendant Catz accepted service of the Complaint on August 26, 2014. *See Exhibit B.* On information and belief, service of the Complaint was perfected on Defendants Bartolo, Budnar, Curry, and Kim on August 26, 2014. On information and belief, Defendant Mythics has been served, although the exact date is unknown to Oracle and Catz. On information and belief, Defendant Puri has not been served.

5. On August 8, 2014, Oracle filed a lawsuit entitled *Oracle America, Inc. v. The Oregon Health Insurance Exchange dba Cover Oregon et al.*, Case No. 3:14-cv-01279-BR in United States District Court for the District of Oregon (the “Federal Action”). In the Federal Action, Oracle originally asserted claims for breach of contract and *quantum meruit* and alleged Cover Oregon breached its OLSA with Oracle by using Oracle’s software code without paying for it. On September 8, 2014, Oracle filed its First Amended Complaint in the Federal Action, asserting copyright infringement, breach of contract, and *quantum meruit* claims against Cover Oregon, DHS, and OHA. *See Exhibit C.* Oracle filed a Corrected First Amended Complaint on September 17, 2014. *See Exhibit D.*

### **GROUND FOR REMOVAL**

6. 28 U.S.C. § 1454(a) provides that a civil action is removable if “any party asserts a claim for relief arising under any Act of Congress relating to patents ... or copyrights.” 28 U.S.C. § 1454(a). Here, Oracle filed its copyright claim in federal court because federal court has exclusive jurisdiction over Oracle’s federal copyright claim, 28 U.S.C. § 1338, and it could not file such a claim in the state court proceeding. Accordingly, Oracle, a party to the state court proceeding, has asserted a claim for relief arising under the federal copyright statute. Thus, this Court has jurisdiction over the claims in the Complaint pursuant to Section 1454(a).

7. This Court also has supplemental jurisdiction under 28 U.S.C. § 1367(a) over Plaintiffs’ claims asserted in the Complaint because those claims are “so related to claims in the action within such original jurisdiction that they form part of the same case or controversy.” 28 U.S.C. § 1367(a). A state claim is part of the same controversy as a federal claim when it “share[s] a common nucleus of operative fact with the federal claims and the state and federal claims would normally be tried together.” *See Bahrapour v. Lampert*, 356 F.3d 969, 978-79 (9th Cir. 2004); *see also Arkema, Inc. v. Anderson Roofing Co.*, 719 F. Supp. 2d 1318, 1326-27 (D. Or. 2010). Here, Oracle’s copyright infringement claim, and Plaintiffs’ claims in the Complaint, all arise out of the same nucleus of facts. Central to both Oracle’s copyright claim and Plaintiffs’ claims are the software, hardware, and consulting services Oracle provided for the Modernization and HIX Projects under the OLSAs with DHS, OHA, and Cover Oregon. Both Plaintiffs and Oracle allege a set of claims arising from the parties’ rights and responsibilities under the OLSAs and from Oracle’s work, including Oracle’s intellectual property rights to the software code that it wrote. Accordingly, this Court has supplemental jurisdiction over all of the claims in the Complaint as they all share a common nucleus of operative facts with Oracle’s copyright claim.

**VENUE**

8. Venue of this action is proper in the Portland Division of the District of Oregon as this is the district and division in which the State court action is pending. 28 U.S.C. §§ 117, 1446(a), and 1454(a).

**TIMELINESS OF REMOVAL**

9. This action is timely under Section 1454(b). Section 1454(b) states that removal under this Section may be made by “any party.” It further states that removal shall be made in accordance with Section 1446(b), except that the time limitations contained in Section 1446(b) may be extended at any time for cause shown. 28 U.S.C. § 1454(b). Pursuant to Section 1446(b), “[i]f the case stated by the initial pleading is not removable, a notice of removal may be filed 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable....” *See* 28 U.S.C. § 1446(b).

10. Here, the Complaint did not contain a cause of action that was removable. Rather, the removable claim is Oracle’s claim for copyright infringement, which was filed on September 8, 2014. Oracle began the registration process with respect to the copyrights that form the basis of its claim on September 1, 2014. Even if the Complaint did contain a removable claim, this Notice of Removal is timely as to Catz because it is filed within 30 days from when service was perfected on Catz on August 26, 2014. This notice is timely as to Oracle and Catz because it was filed within 30 days of when Oracle and Catz first ascertained that the case is one which is or had become removable. *See* 28 U.S.C. § 1446(b). Not all defendants have joined in this Notice because Section 1454(b) states that removal may be made by “any party,” and therefore joinder of all defendants is not required. 28 U.S.C. § 1454(b).

**NOTICE OF REMOVAL TO STATE COURT**

11. In compliance with 28 U.S.C. § 1446(a), attached hereto as Exhibit A are copies of all processes, pleadings, and orders served on or otherwise provided to Defendants Oracle and Catz in the Marion County proceeding to date, including the Summons and Complaint.

12. Oracle and Catz certify that a true and correct copy of this Notice of Removal to Federal Court will promptly be filed with Clerk of the Circuit Court of the State of Oregon for the County of Marion pursuant to 28 U.S.C. § 1446(d).

**CONCLUSION**

13. This Court has original jurisdiction over Oracle's copyright infringement claims under 28 U.S.C. § 1338 and supplemental jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1367(a). Therefore, this action may be removed to this Court pursuant to 28 U.S.C. §§ 1454 and 1441.

WHEREFORE, Oracle prays that this civil action be removed from the Circuit Court of the State of Oregon for the County of Marion to the United States District Court for the District of Oregon.

Respectfully submitted,

Dated: September 25, 2014

By: /s/ Brenna K. Legaard

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